

*The following is an excerpt from the legal textbook *Verfassungsrecht des Grossedeutches Reiches* by Ernst Rudolf Huber. Huber was a prominent jurist and legal scholar in National Socialist Germany. His writings on constitutional law provide us with a deeper understanding into the legal foundations of the National Socialism state.*

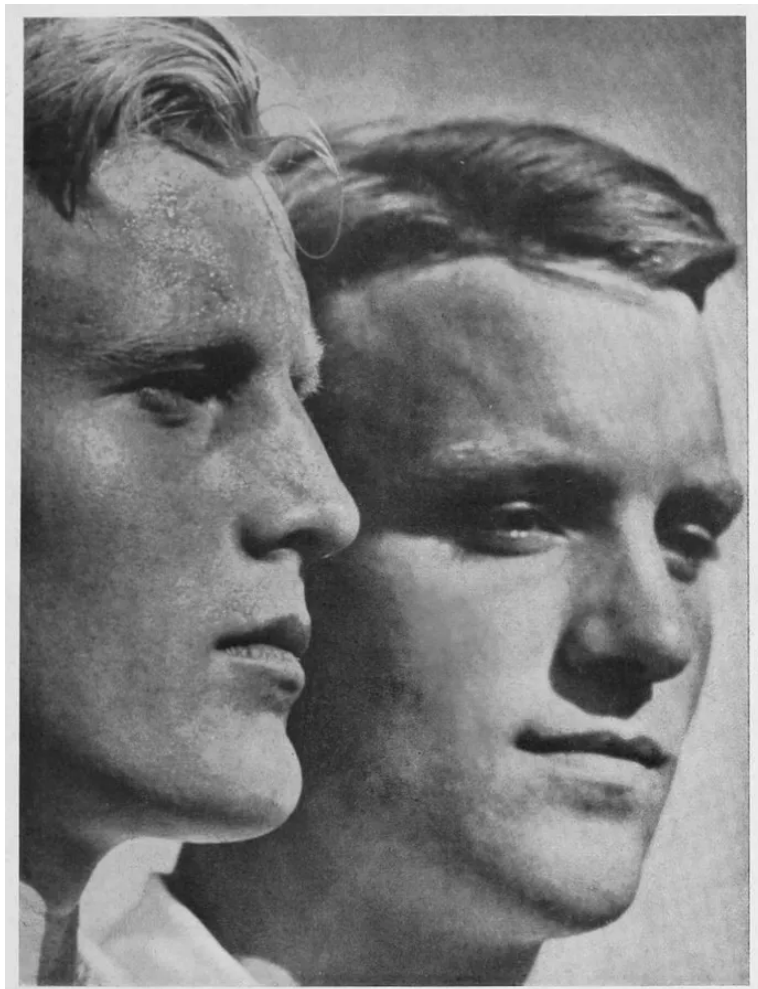
Translators notes: This excerpt includes many terms which have delicate shades of meaning that can only be roughly captured in English. I have taken care to preserve the original character of the text, but something is always lost in translation.

Constitutional Law of the Greater German Empire

III - The Folk

13 - The Political Concept of the Folk

a) The Nature and Conception of the Folk



The new empire is a folkish empire. The nature and conception of the folk are the basic facts that determine the political and legal nature of the empire. Every state speaks in some way of its people as its essential basis, and thus it seems obvious to trace the concept of the state back to a general concept of the people which is common to all peoples and states. In fact, the “general theory of the state” has developed such a universally valid general concept of the “people” that can be applied everywhere in the same way, namely the concept of the “citizenry.” Characteristic of this teaching was the common sentence: “the persons belonging to the state in their totality form the citizenry.” Ethnic affiliation was thus determined here by the legal association with the state. Citizenship, in turn, was characterized by the fact that the individual possessed subjective rights vis-à-vis the state. “Members of the state are in their entirety the citizenry, ie. those who have legal claims to state authority.” This teaching was justified by referring to the “old Germanic view of the priority of individual rights.” It was a question here of a purely individualistic concept of the citizenry, which was based on the individual rights of the citizen in relation to the state authority. Here the nation was no longer a natural unit, but only an artificial multiplicity brought together by state power. A people arose as a product of state power, not an independent creative force. Such a concept of a nation is devoid of meaning and devoid of any concrete historical-political relationship. It will never be possible to grasp the real nature of the living folk with such a concept.

It is not the abstract concept of the citizenry, but the concrete concept of the living folk that forms the basis of the folkish constitution. This concrete concept is always a political concept, in that it grasps the folk in its particular political nature, in which it differs from other peoples. It is therefore an inner necessity that the sciences of the different peoples, if they strive to be concrete, include different elements in the concept of the folk, and that the different peoples have different conceptions of the nature of the folk. One does violence to peoples if one wants to force them to use a single conceptual denominator; one can only do so apparently if one chooses a general concept of the “people in itself” that is devoid of meaning and therefore no longer means anything. When one recognizes the diversity of peoples, it is necessary to recognize the diversity of the concepts of folk that they have developed.

The Italian concept of folk received its characteristic formulation from Mancini, whose famous definition reads:

Folk is a “a natural society of people who have combined the unity of the area of origin, customs, and language into a community of ways of living and a sense of belonging together.”¹

The French concept of the folk has been paraphrased by Ernest Renan, who sees the key criterion of the folk as the consciousness of shared history; the will to unity that flows

¹ Mancini, *The principle of nationality*. Reprint. 1920. p. 41.

from this awareness of the common historical tradition makes the folk. This is how he came to the much-discussed sentence:

The existence of a nation is (pardon the metaphor) a daily plebiscite, just as the existence of the individual is a perpetual affirmation of life.²

The concrete political background from which they emerged is decisive for both definitions. Mancini prepared with his definition the national unification of Italy. Renan fought for the Alsatians to belong to the French nation. For this reason, it was not objective characteristics (race, language, etc.) that were decisive for him, but rather subjective characteristics, namely common experiences, a common consciousness and in general the will of men to feel they belonged to a nation.

This voluntaristic concept of the folk ("whoever wants to belong to the folk does") leads to extreme individualism. Everyone shall have the right to decide freely to join the folk to which he wants to belong, regardless of whether he belongs to it according to objective characteristics. In minority law in particular, the principle has prevailed that, as far as possible, everyone should be free to decide on his or her ethnicity. The German-Polish Upper Silesia Agreement of May 15, 1922 had expressly laid down this principle. Even if this willful determination of ethnicity in nationally mixed areas has a good sense, given that it excludes the danger of arbitrariness on the part of the authorities, it becomes highly questionable when it is elevated to a general principle of the concept of the folk. Yet this view has long been determinative, especially in Germany, as the concept of the cultural nation.³ A German was defined as one who embraced the German culture. The concept of the cultural nation made it possible for foreigners to assimilate through the acquisition of culture. This was especially facilitated when foreigners could at the same time help determine the content of culture through the press and other institutions. The concept of the cultural nation also had a concrete political objective: the assimilation of foreigners should be made possible.

The treatment appropriate for Germany will have to proceed from the fact that only the direct union of objective and subjective characteristics results in the folk; there is no folk without objective unity, but also not without a collective consciousness of unity. The folk is determined by the various factors together: by lineage and landscape, by language and lifestyle, by religion and history, but also by the collective awareness of belonging together and the overall will to oneness. For the concrete concept of the folk of the various peoples, it is decisive which of these characteristics each people regards as primarily determining their nature. The new German Reich proceeds from the concept of

² E. Renan, *What is a nation?* French pages, 8th ed. 1926. p. 70.

³ On the alleged difference between nation state and cultural nation, see Friedrich Meinecke, *Weltbürgertum und Nationalstaat*. 7th ed. 1928. p. 1

the political folk, which through natural form and historical idea is identified as one community.

The political folk is formed by uniformity of kind.⁴ The race is the natural foundation of the nation. Race is an ancestral community distinguished by certain bodily-mental characteristics. The folk, determined by common descent, is a supra-personal genealogical unit in which past, present and future are united. It is a natural, elementary, organic and initially unconsciously existing entity; it is the innate folk. This is active as a fundament in all political phenomena and in all historical epochs, even where it has not advanced to consciousness. Often it is overlaid, obscured, subverted; but even in these distortions and overshadowings it still remains the actual supporting and decisive substance. In times of awakening racial consciousness this endangerment of the national body is overcome; a return to the natural ancestral community takes place. The comprehensive German racial legislation, as it appears in laws governing the civil service, schools and universities, lawyers and notaries, medicine, farmers, the labor service, and the military, has the purpose of restoring the folk as a natural unit. The Nuremberg Laws of September 15, 1935 usher in a definitive solution to this matter; through the Reich Citizenship Law and the Law for the Protection of German Blood and German Honor, the native character of the German folk is to be secured for all time.

The natural folk is an unconsciously evolved and formed entity. Out of it develops all the fruits of organic growth, especially language and religion. The natural folk grows and develops out of itself; it is not consciously created and is not held together by external forms and orders. But initially it lacks awareness of its historical task and the support of a solid political structure. It is always threatened by the danger of disintegrating into tribes and clans and thus dissolving into a mere elementary, unhistorical existence. The folk as a historical entity and power capable of action only emerges in the political folk. In addition to its natural form, historical awareness is a necessary part of the political folk. The historical mission points from the past into the future; it encompasses the collectively experienced formative destiny and the task to be accomplished in the future. Historical experience and historical purpose create in the folk the consciousness of their own nature and the will to live, act, and create according to this nature. The natural folk awakened to historical consciousness and determined to shape history - that is the political folk. The starting point is therefore always the natural folk. Folk then means the politically conscious, politically moved community that pushes for political shaping. As a political folk, the natural community becomes aware of its unity and strives to shape it, develop it, defend it, unfold it. In its deepest essence, "nationalism" is this striving of the

⁴ R. Höhn, *Volk und Verfassung*. German Jurisprudence. Vol. 2 (1927). p. 194 ff., has insinuated that the following remarks, in which not a word has been changed in comparison with the first edition, construct an opposition of natural and political people, and thus a separation of race and history. The attentive reader will not fail to notice that there is no mention of such contrasts and separations in the following: the political folk is understood as a historical stage of development of the natural folk. Or in the exact formulation of the text: "The natural folk awakens in the political folk their historically powerful form."

people, who have become aware of themselves, for self-shaping and self-expression, for deepening and renewing their distinctiveness.

The self-awareness stemming from the experience of the historical conception awakens in the folk the historical creative drive: the will to act. The political folk are not a passive inert mass; they are not a mere object of state effort, not a mere subject of state welfare. It is integral to the political folk that the people themselves advance to active, formative action. The great misunderstanding of democracy is that it can conceive of the people's self-action only in the form of voting according to the principle of the majority. In democracy, the people do not act as a unit, but as a multiplicity of unconnected individuals who form themselves into parties. This is the individualistic, partisan concept of the citizenry in the Weimar Constitution, which does not denote the folk, but only a society of interests. The attempt to activate the citizens in a democracy leads only to the decomposition of the folk. The new empire is based on the principle that the real action of the self-contained folk is possible only according to the principle of leadership and following. In the movement, this political principle finds its activated and disciplined form.

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